

LEXSTAT 20 USCS § 1232G

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TITLE 20. EDUCATION
CHAPTER 31. GENERAL PROVISIONS CONCERNING EDUCATION
GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF
EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY
RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

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20 USCS § 1232g

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions.

(1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

- (i) financial records of the parents of the student or any information contained therein;
- (ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;
- (iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—
 - (I) respecting admission to any educational agency or institution,
 - (II) respecting an application for employment, and
 - (III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; recordkeeping.

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney

General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[:]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in *section 152 of the Internal Revenue Code of 1986* [26 USCS § 152];

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J) (i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school

official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) (A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in *section 16 of title 18, United States Code [18 USCS § 16]*), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in *section 16 of title 18 [18 USCS § 16]*, United States Code), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7) (A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (*42 U.S.C. 14071*) concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations. Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994 [enacted Oct. 20, 1994], the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent. For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section. No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance. The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions. The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Certain disciplinary action information allowable. Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures.

(1) In general. Nothing in this Act or the Higher Education Act of 1965 shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure. Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

(j) Investigation and prosecution of terrorism.

(1) In general. Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in *section 2332b(g)(5)(B) of title 18 United States Code [18 USCS § 232b(g)(5)(B)]*, or an act of domestic or international terrorism as defined in section 2331 of that *title [18 USCS § 2331]*; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval.

(A) In general. An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution. An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping. Subsection (b)(4) does not apply to education records subject to a court order under this subsection.

HISTORY:

(Jan. 2, 1968, P.L. 90-247, Title IV, Part C, Subpart 4, § 444 [438], as added Aug. 21, 1974, P.L. 93-380, Title V, § 513(a), 88 Stat. 571; Dec. 31, 1974, P.L. 93-568, § 2(a), 88 Stat. 1858; Aug. 6, 1979, P.L. 96-46, § 4(c), 93 Stat. 342; Nov. 8, 1990, P.L. 101-542, Title II, § 203, 104 Stat. 2385; July 23, 1992, P.L. 102-325, Title XV, Part H, § 1555(a), 106 Stat. 840; Oct. 20, 1994, P.L. 103-382, Title II, Part A, § 212(b)(1), Part D, § 249, Part E, § 261(h), 108 Stat. 3913, 3924, 3928; Oct. 7, 1998, P.L. 105-244, Title IX, Part E, §§ 951, 952, 112 Stat. 1835; Oct. 28, 2000, P.L. 106-386, Div B, Title VI, § 1601(d), 114 Stat. 1538; Oct. 26, 2001, P.L. 107-56, Title V, § 507, 115 Stat. 367; Jan. 8, 2002, P.L. 107-110, Title

X, Part F, § 1062(3), 115 Stat. 2088.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Higher Education Act of 1965", referred to in subsec. (i), is Act Nov. 8, 1965, P.L. 89-329, which appears generally as *20 USCS §§ 1001 et seq.* For full classification of such Act, consult USCS Tables volumes.

The "Improving America's Schools Act of 1994", referred to subsec. (c), is Act Oct. 20, 1994, P.L. 103-382, 108 Stat. 3518. For full classification of this Act, consult USCS Tables volumes.

"This Act", referred to in this section, is Act Jan. 2, 1968, P.L. 90-247, 81 Stat. 783, popularly known as the Elementary and Secondary Education Amendments of 1967. For full classification of such Act, consult USCS Tables volumes. Title IV of such Act is popularly known as the General Education Provisions Act and appears generally as *20 USCS §§ 1221 et seq.*

Explanatory notes:

The bracketed semicolon has been inserted in subsec. (b)(1)(E)(ii)(II) to indicate the probable intent of Congress to include such punctuation.

Effective date of section:

This section took effect ninety days after enactment, pursuant to Act Aug. 21, 1974, P.L. 93-380, Title V, § 513(b)(1)(i), 88 Stat. 574.

Amendments:

1974. Act Dec. 31, 1974 (effective as provided by § 2(b) of such Act, which appears as a note to this section), in subsec. (a), in para. (1), designated the existing provisions as subpara. (A) and, in subpara. (A) as so designated, substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school agency offering a preschool program, or any other educational institution", substituted "who are or have been in attendance at a school of such agency or at such institution, as the case may be" for "attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution", substituted "the education records of their children" for "any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns.", substituted "If any material or document in the education record of a student includes" for "Where such records or data include", substituted "one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material" for "any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child"; substituted "educational agency or institution" for "recipient", substituted "the education records of their children" for "their child's school records", and added subparas. (B) and (C), in para. (2), substituted "No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order" for "Parents shall have an opportunity for a hearing to challenge the content of their child's school records," and inserted "and to insert into such records a written explanation of the parents respecting the content of such records", and added paras. (3)-(6); in subsec. (b), para. (1), introductory matter, substituted "educational agency or institution" for "State or local educational agency, any institution

of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", inserted "or practice", and substituted "education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a))" for "personally identifiable records of files (or personal information contained therein)", in subpara. (A), substituted ", who have been determined by such agency or institution to" for "who", in subpara. (B), inserted "seeks or", in subpara. (C), substituted "section 408(c)" for "section 409 of this Act", and deleted "and" after "subsection;", in subpara. (D), substituted a semicolon for the final period, added subparas. (E)-(I) and the concluding matter, in para. (2), substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", and substituted "releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection." for "furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1)", in para. (3) substituted "*Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements" for "*Provided*, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected.", in para. (4), substituted subpara. (A) for one which read: "With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system."; in subsec. (e), substituted "to any educational agency or institution unless such agency or institution" for "unless the recipient of such funds"; and in subsec. (g), deleted ", according to the procedures contained in sections 434 and 437 of this Act" after "violations of this section", and inserted the sentence beginning "Except for the conduct . . .".

1979. Act Aug. 6, 1979 (effective 10/1/78, as provided by § 8 of such Act, which appears as 20 USCS § 2701 note), added subsec. (b)(5).

1990. Act Nov. 8, 1990 added subsec. (b)(6).

1992. Act July 23, 1992 (effective on enactment as provided by § 1555(b) of such Act) substituted subsec. (a)(4)(B)(ii) for one which read: "if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;".

1994. Act Oct. 20, 1994 (effective on enactment, as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note), in subsec. (a), in para. (1), redesignated subparas. (B) and (C) as subparas. (C) and (D), respectively, and added a new subpara. (B), in subpara. (C) as redesignated, in cl. (iii), substituted "subparagraph (D)" for "subparagraph (C)" and, in subpara. (D) as redesignated, substituted "subparagraph (C)" for "subparagraph (B)", in para. (2), substituted "rights" for "or other rights" and, in para. (4)(B)(ii), substituted the semicolon for a period; in subsec. (b), in para. (1), subpara. (A), inserted ", including the educational interests of the child for whom consent would otherwise be required", in subpara. (C), substituted "or (iii)" for "(iii) an administrative head of an education agency (as defined in section 408(c)), or (iv)", substituted subpara. (E) for one which read: "State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;", in subpara. (H), substituted "1986" for "1954" and deleted "and" following the semicolon, in subpara. (I), substituted "; and" for a period, and added subpara. (J), in para. (2)(B), inserted "except as provided in paragraph (1)(J)", in para. (3), substituted "or (C)" for "(C) an administrative head of an education agency or (D)" and substituted "education programs"

for "education program" and, in para. (4)(B), inserted the sentence beginning "If a third party outside . . ."; in subsec. (c), substituted "Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which" for "The Secretary shall adopt appropriate regulations to"; in subsec. (d), inserted a comma after "education"; in subsec. (e), inserted "effectively"; in subsec. (f), deleted ", or an administrative head of an education agency," following "The Secretary", substituted "enforce this section" for "enforce provisions of this section", substituted "in accordance with" for "according to the provisions of", and substituted "comply with this section" for "comply with the provisions of this section"; in subsec. (g), deleted "of Health, Education, and Welfare" following "Department" and deleted "the provisions of" following "adjudicating violations of"; and added subsec. (h).

Such Act further (effective as above) purported to amend the introductory matter of subsec. (b)(2), by substituting ", unless—" for a period; however, the amendment could not be executed because the introductory matter included no period.

1998. Act Oct. 7, 1998 (effective on 10/1/98, as provided by § 3 of such Act, which appears as *20 USCS § 1001* note), in subsec. (b), in para. (1), substituted subpara. (C) for one which read: "(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;" and, in para. (6), designated the existing provisions as subpara. (A) and, in such subparagraph, substituted "or a nonforcible sex offense, the final results" for "the results" and substituted "such crime or offense" for "such crime" in two places, and added subparas. (B) and (C); and added subsec. (i).

2000. Act Oct. 28, 2000, in subsec. (b), added para. (7).

2001. Act Oct. 26, 2001, added subsec. (j).

2002. Act Jan. 8, 2002 (effective 1/8/2002, subject to certain exceptions, as provided by § 5 of such Act, which appears as *20 USCS § 6301* note), in subsec. (b)(1), in the concluding matter, substituted "subparagraph (E)" for "clause (E)".

Such Act further (effective as above) made technical corrections which did not affect the text of this section.

Redesignation:

This section, enacted as § 438 of Subpart 4 of Part C of Title IV of Act Jan. 2, 1968, P.L. 90-247, was redesignated § 444 of such Subpart by Act Oct. 20, 1994, P.L. 103-382, Title II, Part A, § 212(b)(1), 108 Stat. 3913.

Short titles:

Act Aug. 21, 1974, P.L. 93-380, Title V, § 513(b)(2)(i), 88 Stat. 574 provides: "This section [adding this section] may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

Transfer of functions:

Act Oct. 17, 1979, P.L. 96-88, Title III, § 301, 93 Stat. 677, which appears as *20 USCS § 3441*, transferred functions and offices (relating to education) of the Department of Health, Education, and Welfare to the Department of Education.

Other provisions:

Effective date and application of Dec. 31, 1974 amendments. Act Dec. 31, 1974, P.L. 93-568, § 2(b), 88 Stat. 1858, provides: "The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974."

NOTES:

Code of Federal Regulations:

Office of the Secretary, Department of Education—Family educational rights and privacy, 34 CFR Part 99.

Related Statutes & Rules:

This section is referred to in 20 USCS §§ 1092, 1232h, 1232i, 1417, 2304, 7115, 7165, 7903, 9274, 9514, 9573; 25 USCS § 3205; 29 USCS § 2871; 42 USCS § 11432.

Research Guide:

Federal Procedure:

- 15 Fed Proc L Ed, Freedom of Information § 38:15.
- 17 Fed Proc L Ed, Health, Education, and Welfare § 42:1369.
- 17A Fed Proc L Ed, Health, Education, and Welfare § 42:1967.

Am Jur:

68 Am Jur 2d, Schools § 325.

Am Jur Proof of Facts:

87 Am Jur Proof of Facts 3d, Confidentiality of Medical and Other Treatment Records, p. 259.

Forms:

8A Am Jur Pl & Pr Forms (Rev ed), Declaratory Judgments § 26.

Annotations:

What is "interest" relating to property or transaction which is subject of action sufficient to satisfy that requirement for intervention as matter of right under *Rule 24(a)(2) of Federal Rules of Civil Procedure*. 73 ALR Fed 448.

Validity, construction, and application of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g). 112 ALR Fed 1.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

Law Review Articles:

Nevin; Scott. The USA Patriot Act: Time To Speak Up [Discussion of T. Derden, One Year Under the Patriot Act]. 46 Advoc (Boise) 19, December 2003.

Brandt; Van Valkenburgh. The USA Patriot Act: The Devil is in the Details [Discussion of T. Derden, One Year Under the Patriot Act]. 46 Advoc (Boise) 24, December 2003.

Chemerinsky. Litigation alerts in the USA Patriot Act. 23 Cal Law 29, April 2003.

Labunski. I'll Never Tell: FERPA, Peer Grading, and the Disclosure of Student Records after *Owasso v. Falvo*. 22 Children's Legal Rts J 33, Spring 2002.

Rosenszweig. Civil Liberty and the Response to Terrorism. 42 Duquesne Law Rev 663, Summer 2004.

Wiley. Supreme Court hands teachers victory in peer-grading case. 49 Fed Law 21, May 2002.

The USA Patriot Act: Privacy Versus Security in a Post-9/11 World. Symposium. 29 NC J Int'l & Com Reg 595, Summer 2004.

Sproule. The Effect of the USA Patriot Act on Workplace Privacy. 49 Prac Law 35, February 2003.

Interpretive Notes and Decisions:

I. IN GENERAL 1. Generally 2. Relationship to other laws 3. Construction 4. Who is "student"

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I. IN GENERAL 1. Generally

20 USCS § 1232g(b)(1) reflects binding obligation on schools, rather than mere congressional preference for certain kind of conduct. *Falvo ex rel. Pletan v Owasso Indep. Sch. Dist. No. I-011* (2000, CA10 Okla) 233 F3d 1203, 2000 Colo J C A R 5678, revd on other grounds, remanded (2002) 534 US 426, 151 L Ed 2d 896, 122 S Ct 934, 2002 CDOS 1546, 2002 Daily Journal DAR 1869, 15 FLW Fed S 116 and reinstated, in part, vacated in part on other grounds (2002, CA10 Okla) 288 F3d 1236 and (ovrld in part on other grounds by *Gonzaga Univ. v Doe* (2002) 536 US 273, 153 L Ed 2d 309, 122 S Ct 2268, 2002 CDOS 5458, 2002 Daily Journal DAR 6859, 15 FLW Fed S 436).

Family Educational Rights and Privacy Act, 20 USCS § 1232g, leaves intact state's authority to determine who may make educational decisions on behalf of child, so long as state does so in manner consistent with federal statutes. *Taylor v Vt. Dep't of Educ.* (2002, CA2 Vt) 313 F3d 768 (criticized in *Selkridge v United of Omaha Life Ins. Co.* (2004, CA3) 45 VI 712, 360 F3d 155, 32 EBC 1349).

Underlying purpose of statute is not to grant individual students right to privacy or access to educational records but to stem growing policy of institutions to carelessly release student records. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, affd without op (1986, CA3 Pa) 787 F2d 583.

Right of privacy in student records is recognized by 20 USCS § 1232g. *Porten v University of San Francisco* (1976, 1st Dist) 64 Cal App 3d 825, 134 Cal Rptr 839.

2. Relationship to other laws

Federal government's request to obtain records containing students' personal information in order to demonstrate that county board of education was in violation of § 407 of Civil Rights Act of 1964, 42 USCS § 2000c-6(a), (b), and to enforce compliance with desegregation goal of Civil Rights Act of 1964 constituted law enforcement purposes under 20 USCS § 1232g(b)(1)(C)(ii) of Family Educational Rights and Privacy Act, 20 USCS § 1232g; consequently, government's motion to compel discovery of these records was granted. *United States v Bertie County Bd. of Educ.* (2004, ED NC) 319 F Supp 2d 669.

Protection and Advocacy for Mentally Ill Individuals Act requires protection and advocacy system to maintain confidentiality of records requested from mental health provider to same extent that is required of provider by applicable law; State Office of Protection and Advocacy for Persons with Disabilities therefore was bound by confidentiality provisions of Federal Educational Rights and Privacy Act and Individuals with Disabilities Education Act upon receipt of any educational records from Transitional Learning Academy. Conn. Office of Prot. & Advocacy for Persons with Disabilities v *Hartford Bd. of Educ.* (2005, DC Conn) 355 F Supp 2d 649.

3. Construction

For purposes of Family Educational Rights and Privacy Act of 1974 (20 USCS § 1232g), which provides in § 1232g(a)(4)(A) that school-related items are protected "education records" only if they are maintained by educational agency or institution or by person acting for such agency or institution, phrase "acting for" connotes agents of school, such as teachers, administrators, and other school employees. *Owasso Indep. Sch. Dist. No. I-011 v Falvo* (2002) 534 US 426, 151 L Ed 2d 896, 122 S Ct 934, 2002 CDOS 1546, 2002 Daily Journal DAR 1869, 15 FLW Fed S 116.

4. Who is "student"

Teacher was employee and not "student" of institution requested to disclose her college transcript, and thus did not fall within class of people for whose benefit act was created. *Klein Independent School Dist. v Mattox* (1987, CA5 Tex) 830 F2d 576, 2 BNA IER Cas 1391, cert den (1988) 485 US 1008, 99 L Ed 2d 702, 108 S Ct 1473.

Person is not "student" for purpose of gaining access to admission files pursuant to FERPA where his application was rejected and he only audited some classes. *Tarka v Franklin* (1989, CA5 Tex) 891 F2d 102, cert den (1990) 494 US 1080, 108 L Ed 2d 940, 110 S Ct 1809, reh den (1990) 496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

Term "student" under Act does not include person who has not been in attendance at educational institution. *Norwood v Slammons* (1991, WD Ark) 788 F Supp 1020.

II. PRACTICE AND PROCEDURE 5. Private right of action, generally

Enforcement of 20 USCS § 1232g is solely in hands of Secretary of Health, Education and Welfare under § 1232g(f); no private remedy is granted under statute, and none arises by inference. *Girardier v Webster College* (1977, CA8 Mo) 563 F2d 1267.

Family Educational Rights and Privacy Act (20 USCS § 1232g) did not confer private right of action upon either aggrieved student or her parents. *Frazier v Fairhaven Sch. Comm.* (2002, CA1 Mass) 276 F3d 52 (criticized in *Dohmen v Twin Rivers Pub. Sch.* (2002, DC Neb) 207 F Supp 2d 972).

Buckley Amendment set forth at 20 USCS § 1232g did not provide private cause of action to compel college to issue certified copies of college transcripts to former students. *Girardier v Webster College* (1976, ED Mo) 421 F Supp 45, vacated on other grounds (1977, CA8 Mo) 563 F2d 1267.

In view of the significant role of private law suits in ending various forms of discrimination in school systems, 20 USCS § 1232g should not serve as a cloak for alleged discriminatory practices simply because litigation to end such practices is initiated by private plaintiffs rather than the government. *Rios v Read* (1977, ED NY) 73 FRD 589.

20 USCS § 1232g does not give rise to private federal cause of action in favor of aggrieved person since it is simply directed to Secretary of Education to prohibit distribution of public funds as sanction against schools which denied students right to inspect and review their educational records. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, affd without op (1986, CA3 Pa) 787 F2d 583.

20 USCS § 1232g does not create private right of action. *Tombrello v USX Corp.* (1991, ND Ala) 763 F Supp 541, 30 BNA WH Cas 650, 119 CCH LC P 35502.

Former student may not bring action under 20 USCS § 1232g against university, where student claimed university released transcript of his academic record to U.S. Attorneys' office without properly notifying him, resulting in his conviction for drug offence, because university's failure to comply with § 1232g does not give rise to private cause of action. *Francois v University of District of Columbia* (1992, DC Dist Col) 788 F Supp 31, affd (1993, App DC) 1993 US App LEXIS 5051.

Because there was no private right of action under Family Educational Rights and Privacy Act, 20 USCS § 1232g, school board was entitled to summary judgment in disabled student's action challenging hearing officer's decision partly affirming individualized education plan proposed by school board. *Warton v New Fairfield Bd. of Educ.* (2002, DC Conn) 217 F Supp 2d 261.

Individual plaintiff cannot maintain private right of action for violation of Family Educational Rights and Privacy Act of 1974, 20 USCS § 1232g, directly. *Slovinec v DePaul Univ.* (2002, ND Ill) 222 F Supp 2d 1058, affd (2003, CA7 Ill) 332 F3d 1068.

20 USCS § 1232g is not enforceable through private lawsuits. *Curto v Smith* (2003, ND NY) 248 F Supp 2d 132, affd (2004, CA2 NY) 392 F3d 502, 86 CCH EPD P 41868, cert den (2005, US) 125 S Ct 2944, 162 L Ed 2d 875, reh den (2005, US) 126 S Ct 402, 163 L Ed 2d 287 and cert den (2006, US) 2006 US LEXIS 1274.

Unpublished Opinions

Unpublished: Plaintiffs have no private right of action under either Federal Educational Rights and Privacy Act of 1974, 20 USCS § 1232g(a)(2), itself or 42 USCS § 1983. *C.M. v Bd. of Educ.* (2005, CA3 NJ) 128 Fed Appx 876.

6. Proceeding under 42 USCS § 1983

Nondisclosure provisions of Family Educational Rights and Privacy Act of 1974, 20 USCS § 1232g, did not create rights enforceable under 42 USCS § 1983 because provisions contained no rights-creating language, had aggregate rather than individual focus, and served primarily to direct United States Secretary of Education's distribution of public funds to educational institutions. *Gonzaga Univ. v Doe* (2002) 536 US 273, 153 L Ed 2d 309, 122 S Ct 2268, 2002 CDOS 5458, 2002 Daily Journal DAR 6859, 15 FLW Fed S 436.

Although no private right of action exists under 20 USCS § 1232g, action under 42 USCS § 1983 may be premised on violation of § 1232g. *Tarka v Cunningham* (1990, CA5 Tex) 917 F2d 890.

Family Educational Rights and Privacy Act's records-access provisions do not create personal right enforceable under 42 USCS § 1983. *Taylor v Vt. Dep't of Educ.* (2002, CA2 Vt) 313 F3d 768 (criticized in *Selkridge v United of Omaha Life Ins. Co.* (2004, CA3) 45 VI 712, 360 F3d 155, 32 EBC 1349).

Student's claim against school district under 20 USCS § 1232g may be brought under 42 USCS § 1983, because (1) language of § 1232g reveals congressional intent to impose obligations directly on educational agencies or institutions, (2) plain meaning of statute sets forth what educational agencies or institutions must do and not do in order to be eligible for federal funds, (3) plaintiff's claim can be readily enforced by judiciary, and results will not vary based on facts and law, and (4) enforcement regulations do not demonstrate congressional intent to preclude suits under § 1983 to remedy violations of § 1232g. *Belanger v Nashua Sch. Dist.* (1994, DC NH) 856 F Supp 40.

Individual plaintiff cannot maintain private right of action for violation of Family Educational Rights and Privacy Act of 1974, 20 USCS § 1232g, as basis for claim under 42 USCS § 1983. *Slovinec v DePaul Univ.* (2002, ND Ill) 222 F Supp 2d 1058, affd (2003, CA7 Ill) 332 F3d 1068.

Family Education and Privacy Rights Act's nondisclosure provisions failed to confer enforceable rights, however, claims under 42 USCS § 1983 for violations of confidentiality requirements of Individuals with Disabilities Education Act were entirely viable. *P.N. v Greco* (2003, DC NJ) 282 F Supp 2d 221.

Unpublished Opinions

Unpublished: Under Federal Educational Rights and Privacy Act of 1974, 20 USCS § 1232g(a)(5)(A), "directory information" as to plaintiff parents' occupations or educational histories is exempt from confidentiality requirements and, thus, defendant school district's disclosure of that information to insurers, attorneys, and expert witnesses was not actionable; further, 20 USCS § 1232g(a)(1)(C) protects only plaintiff parents' financial records from disclosure; finally, as 20 USCS § 1232g(b)(3) provides that Act's confidentiality provisions, incorporated by Individuals with Disabilities in Education Act (IDEA), 20 USCS § 1400 et seq., does not preclude access to student records necessary to enforce federal law, where plaintiff father filed complaint with Department of Education Office for Civil Rights (OCR) alleging that defendant school district discriminated on basis of disability and defendant school district superintendent disclosed child's records to OCR only after it requested them in letter citing federal regulations requiring that OCR be provided with all pertinent documents, disclosures to OCR were thus clearly authorized under § 1232g(b)(3). *C.M. v Bd. of Educ.* (2005, CA3 NJ) 128 Fed Appx 876.

7.—Particular cases

On certiorari to review Federal Court of Appeals' judgment in favor of mother who had three children enrolled in public school district—with respect to mother's 42 USCS § 1983 claim that school district and some school officials violated Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) by allowing school-class practice called peer grading—the United States Supreme Court did not need to resolve whether FERPA provided private parties like mother with cause of action enforceable under § 1983 and, instead, Supreme Court assumed, without deciding or expressing opinion on issue, that private parties could sue educational agency under § 1983 to enforce FERPA provisions in question. *Owasso Indep. Sch. Dist. No. I-011 v Falvo* (2002) 534 US 426, 151 L Ed 2d 896, 122 S Ct 934, 2002 CDOS 1546, 2002 Daily Journal DAR 1869, 15 FLW Fed S 116.

Parent's claim that school district and teacher violated 20 USCS § 1232g(b)(1) of Family Educational Rights and Privacy Act was properly dismissed by district court as Act's nondisclosure provisions created no rights enforceable under 42 USCS § 1983. *Cudjoe v Indep. Sch. Dist. No. 12* (2002, CA10 Okla) 297 F3d 1058.

University is enjoined from allowing unprotected distribution of class rosters containing social security numbers and names of students, where students had filed action under 42 USCS § 1983 claiming that distribution violates 20 USCS § 1232g(b)(1), because claims made under § 1232g may be raised in § 1983 action and no explicit or implicit exhaustion requirement exists under § 1232g as shown by inadequacy of Secretary of Education's regulations coupled with § 1232g's failure to provide more complete relief for aggrieved individuals. *Krebs v Rutgers* (1992, DC NJ) 797 F Supp 1246.

Claim premised on violation of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) must fail, even though FERPA establishes federal statutory rights which are enforceable under § 1983, where only information

released by school board was reporting of authorized expenditures in board meeting minutes published according to requirements of state law, which led to public identification of autistic child requiring expenditures which led to property tax increase, because board cannot be liable for complying with state law which was not clearly preempted by federal law. *Maynard v Greater Hoyt Sch. Dist. No. 61-4* (1995, DC SD) 876 F Supp 1104, subsequent app sub nom *Greater Hoyt Sch. Dist. No. 61-4 v National Union Fire Ins. Co.* (1997, CA8 SD) 1997 US App LEXIS 19763.

Section 1983 action on behalf of 13-year-old hermaphrodite may proceed, where Family Educational Rights and Privacy Act (20 USCS § 1232g) does not give rise to private cause of action but does create interest that may be vindicated in § 1983 action, because question of fact remains as to whether information disclosed in due process hearing and reported by newspaper in story about establishment of emotional behavior disorder unit was personally identifiable and in violation of statute. *Doe v Knox County Bd. of Educ.* (1996, ED Ky) 918 F Supp 181.

Former university student's § 1983 claim for violation of his rights under 20 USCS § 1232g(a)(2) may proceed, even though statute provides him no avenue to challenge revocation of his degree, where he may challenge asserted ministerial error involved in "enrollment discontinued" notation on his transcript, because he has put forth evidence that university officials denied him rightful hearing. *Goodreau v Rector* (2000, WD Va) 116 F Supp 2d 694.

Former student's allegations that college and officials violated and conspired to violate her rights under Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USCS § 1232g, by disclosing fact that student failed exam to emeritus professor, various unnamed members of public, and Department of Education were unavailing because FERPA is not enforceable through private lawsuits, either directly under statute or via 42 USCS § 1983. *Curto v Smith* (2003, ND NY) 248 F Supp 2d 132, affd (2004, CA2 NY) 392 F3d 502, 86 CCH EPD P 41868, cert den (2005, US) 125 S Ct 2944, 162 L Ed 2d 875, reh den (2005, US) 126 S Ct 402, 163 L Ed 2d 287 and cert den (2006, US) 2006 US LEXIS 1274.

8. Pleadings

Student's counterclaim pursuant to 20 USCS § 1232g, initiated through 42 USCS § 1983, was properly dismissed since there was no basis for private suit under *Family Education and Privacy Rights Act*. *Shockey v Svoboda* (2003, CA7 Ill) 342 F3d 736, 84 CCH EPD P 41532.

In action against school officials for censorship of student newspaper, allegation in answer, that information contained within articles was subject to proscriptions of 20 USCS § 1232g, will not be stricken, since it cannot be said at early stage of litigation that 20 USCS § 1232g is legally insufficient defense. *Kuhlmeier v Hazelwood School Dist.* (1984, ED Mo) 578 F Supp 1286, 38 FR Serv 2d 1491.

In action against publicly funded law school and officials, school's graduate may not amend complaint to add claim under § 1983 for alleged violation of 20 USCS § 1232g, where claim was based on fact that defendants attached to their answer to student's complaint for breach of contract and interference with contractual relations 2 letters from student to defendants concerning matters relevant to lawsuit, because § 1232g(b) requires only that participating institution not have policy or practice that permits unauthorized release of educational records and defendant's discrete submission of 2 letters to court does not state claim for violation of this section. *Gundlach v Reinstein* (1996, ED Pa) 924 F Supp 684, affd without op (1997, CA3 Pa) 114 F3d 1172.

9. Evidence

School did not violate Hemophiliac and Hepatitis-B infected students' privacy rights under 20 USCS § 1232g, where there was insufficient evidence that anyone heard conversation between principal and coach regarding student's medical condition. *Doe v Woodford County Bd. of Educ.* (2000, CA6 Ky) 213 F3d 921, 10 AD Cas 1094, 2000 FED App 176P.

10.—Discovery

In suit for plaintiff's personal injuries received when defendant, while intoxicated, negligently drove defendant's motor vehicle into plaintiff, defendant could enforce limitations 20 USCS § 1232g placed on educational institutions, by bringing motion for protective order, pursuant to *Fed. R. Civ. P. 26(c)*, seeking to withhold discovery sought by plaintiff regarding incident. *DeFeo v McAboy* (2003, ED Mo) 260 F Supp 2d 790.

Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, should not operate to protect allegations of abuse by substitute teachers from discovery in private actions designed to combat such abuse. *Ellis v Cleveland Mun. Sch. Dist.* (2004, ND Ohio) 309 F Supp 2d 1019.

School district was ordered to comply with plaintiff's discovery requests for incident reports related to altercations between substitute teachers and students, student and employee witness statements related to these incidents, and information related to subsequent discipline, if any, imposed on substitute teachers because Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, did not apply in that teacher discipline information was clearly outside purview of FERPA, which pertained to teachers and not students. *Ellis v Cleveland Mun. Sch. Dist.* (2004, ND Ohio) 309 F Supp 2d 1019.

Federal government's request to obtain records containing students' personal information in order to demonstrate that county board of education was in violation of § 407 of Civil Rights Act of 1964, 42 USCS § 2000c-6(a), (b), and to enforce compliance with desegregation goal of Civil Rights Act of 1964 constituted law enforcement purposes under 20 USCS § 1232g(b)(1)(C)(ii) of Family Educational Rights and Privacy Act, 20 USCS § 1232g; consequently, government's motion to compel discovery of these records was granted. *United States v Bertie County Bd. of Educ.* (2004, ED NC) 319 F Supp 2d 669.

11.—Subpoenas

In course of suit challenging procedures used by state for placing children with handicapping conditions in specialized classes, in which plaintiffs alleged that these procedures did not satisfy federal statutory requirement, 20 USCS § 1232g did not bar disclosure of certain subpoenaed educational documents where conditions of subpoena permitted deletion of any information contained in documents which tended to identify student or students who were subject of or mentioned in documents; if § 1232g were in fact applicable in that subpoenaed documents were in "personally identifiable form," task of sending notification to student's parents prior to documents' production falls on educational agency or institution which has custody of documents and not on party who subpoenaed documents. *T. v Johnston* (1976, ND Miss) 74 FRD 498.

In view of policies underlying Family Educational and Privacy Rights Act, court will impose limitations on subpoenas so as to restrict their scope to material that pertains to acts specified in complaint. *Chazin v Lieberman* (1990, SD NY) 129 FRD 97.

Court ordered that subpoenaed educational records be deposited with court rather than with U.S. Attorney's Office and be made available only if they became relevant upon defendant's raising contemplated defense, since order was appropriate to protect confidentiality accorded to such documents under 20 USCS § 1232g. *United States v Hunter* (1998, DC Vt) 13 F Supp 2d 586.

Defendant's college submitted requested document to court under seal for disposition of defendant's motion for protective order, and, in doing so, college gave defendant notice of subpoena and opportunity to seek protective action, which defendant did; thus, although record was silent on college's notice to defendant's parents, it substantially complied with 20 USCS § 1232g(b)(2)(B), part of Family Educational Rights and Privacy Act, and 34 C.F.R. § 99.31(a)(9)(i) and (ii). *DeFeo v McAboy* (2003, ED Mo) 260 F Supp 2d 790.

20 USCS § 1232g does not bar disclosure of murder victim's school records in criminal trial of alleged murderer where victim's reputation for belligerence and aggressiveness was at issue, since statute prohibits only practice or policy of disclosure of educational records and expressly recognizes that disclosure may be made in response to subpoena duces tecum or other judicial order. *State v Birdsall* (1977, App) 116 Ariz 196, 568 P2d 1094.

12. Remedies or relief

Student's claim against school district seeking declaratory relief under 20 USCS § 1232g may be brought under 42 USCS § 1983, because (1) language of § 1232g reveals congressional intent to impose obligations directly on educational agencies or institutions, (2) plain meaning of statute sets forth what educational agencies or institutions must do and not do in order to be eligible for federal funds, (3) plaintiff's claim can be readily enforced by judiciary, and results will not vary based on facts and law, and (4) enforcement regulations do not demonstrate congressional intent to preclude suits under § 1983 to remedy violations of § 1232g. *Belanger v Nashua Sch. Dist.* (1994, DC NH) 856 F Supp 40.

13.—Injunctions

Department of Education is enjoined from preventing universities from releasing to public personally identifiable information in law enforcement records regarding students by withdrawing or threatening to withdraw federal funding, where public interest in greater access to information bearing on personal safety and crime prevention outweighs arrested students' privacy interests in protecting their reputations, because 20 USCS § 1232g prohibition of information disclosure

was afool of First Amendment. *Student Press Law Center v Alexander* (1991, DC Dist Col) 778 F Supp 1227, 19 Media L R 1620.

University is enjoined from allowing unprotected distribution of class rosters containing social security numbers and names of students, where students had filed action under 42 USCS § 1983 claiming that distribution violates 20 USCS § 1232g(b)(1), because claims made under § 1232g may be raised in § 1983 action and no explicit or implicit exhaustion requirement exists under § 1232g as shown by inadequacy of Secretary of Education's regulations coupled with § 1232g's failure to provide more complete relief for aggrieved individuals. *Krebs v Rutgers* (1992, DC NJ) 797 F Supp 1246.

Student's claim against school district seeking injunctive relief under 20 USCS § 1232g may be brought under 42 USCS § 1983, because (1) language of § 1232g reveals congressional intent to impose obligations directly on educational agencies or institutions, (2) plain meaning of statute sets forth what educational agencies or institutions must do and not do in order to be eligible for federal funds, (3) plaintiff's claim can be readily enforced by judiciary, and results will not vary based on facts and law, and (4) enforcement regulations do not demonstrate congressional intent to preclude suits under § 1983 to remedy violations of § 1232g. *Belanger v Nashua Sch. Dist.* (1994, DC NH) 856 F Supp 40.

Government was entitled to permanent injunction to prohibit universities' future violations of 20 USCS § 1232g, where government showed that universities had violated statute by releasing student disciplinary records containing personally identifiable information without prior consent of students or their parents, since this was only adequate remedy available and harm to third parties that could arise from injunction enforcing statute was slight. *United States v Miami Univ.* (2000, SD Ohio) 91 F Supp 2d 1132, affd (2002, CA6 Ohio) 294 F3d 797, 30 Media L R 2057, 2002 FED App 213P.

14. Miscellaneous

Mother lacked standing to bring her record-amendment claim under 20 USCS § 1232g(a)(2) because divorce decree clearly stated that all legal rights over daughter's education lay with father, and mother's decision to bring hearing under 20 USCS § 1232g to challenge content of daughter's records certainly fell within authority given to father to make educational determinations on behalf of daughter. *Taylor v Vt. Dep't of Educ.* (2002, CA2 Vt) 313 F3d 768 (criticized in *Selkridge v United of Omaha Life Ins. Co.* (2004, CA3) 45 VI 712, 360 F3d 155, 32 EBC 1349).

III. PARTICULAR CASES, RECORDS AND INFORMATION 15. Disciplinary records

Prospective law student's action against university officials for failing to release information pursuant to 20 USCS § 1232g is dismissed, where prospective student seeks records relating to school disciplinary proceedings against several athletes for sexual incident in athletic dorm, because § 1232g creates no private right of action, term "student" under Act does not include person who has not been in attendance at educational institution, and violation of § 1232g consists of releasing information concerning that person's attendance, not refusal to release information concerning someone else. *Norwood v Slammons* (1991, WD Ark) 788 F Supp 1020.

Government was entitled to permanent injunction to prohibit universities' future violations of 20 USCS § 1232g, where government showed that universities had violated statute by releasing student disciplinary records containing personally identifiable information without prior consent of students or their parents, since this was only adequate remedy available and harm to third parties that could arise from injunction enforcing statute was slight. *United States v Miami Univ.* (2000, SD Ohio) 91 F Supp 2d 1132, affd (2002, CA6 Ohio) 294 F3d 797, 30 Media L R 2057, 2002 FED App 213P.

School district was ordered to comply with plaintiff's discovery requests for incident reports related to altercations between substitute teachers and students, student and employee witness statements related to these incidents, and information related to subsequent discipline, if any, imposed on substitute teachers because Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, did not apply in that teacher discipline information was clearly outside purview of FERPA, which pertained to teachers and not students. *Ellis v Cleveland Mun. Sch. Dist.* (2004, ND Ohio) 309 F Supp 2d 1019.

16. Expenditures

Claim premised on violation of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) must fail, even though FERPA establishes federal statutory rights which are enforceable under § 1983, where only information released by school board was reporting of authorized expenditures in board meeting minutes published according to requirements of state law, which led to public identification of autistic child requiring expenditures which led to property tax increase, because board cannot be liable for complying with state law which was not clearly preempted by federal law.

Maynard v Greater Hoyt Sch. Dist. No. 61-4 (1995, DC SD) 876 F Supp 1104, subsequent app sub nom *Greater Hoyt Sch. Dist. No. 61-4 v National Union Fire Ins. Co.* (1997, CA8 SD) 1997 US App LEXIS 19763.

Information concerning amount of money paid to student athletes are not educational records required to be closed under Family Educational Rights and Privacy Act (20 USCS §§ 1230 et seq.). *Arkansas Gazette Co. v Southern State College* (1981) 273 Ark 248, 620 SW2d 258, 7 Media L R 1837, cert den and app dismd (1982) 455 US 931, 71 L Ed 2d 640, 102 S Ct 1416.

17. Grades and grading

In school which is subject to restrictions imposed by Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) on releasing students' "education records," practice which has been called peer grading—whereby teacher sometimes asks students in class to score each other's tests, papers, and assignments as teacher explains correct answers to entire class—does not violate FERPA, at least during initial stage until teacher has collected grades on students' papers or other items and has recorded grades in teacher's grade book, because at that stage, such peer-graded items do not constitute education records protected by FERPA. *Owasso Indep. Sch. Dist. No. I-011 v Falvo* (2002) 534 US 426, 151 L Ed 2d 896, 122 S Ct 934, 2002 CDOS 1546, 2002 Daily Journal DAR 1869, 15 FLW Fed S 116.

Cause of action against university and professor based on disappointing grade received in physics class is dismissed, even though 20 USCS § 1232g(a)(2) provides that no federal funds shall be made available to educational agency unless parents have opportunity for hearing to insure accuracy of student's education records, because neither statute nor school policy provides means by which student may obtain information on how particular grade was assigned. *Tarka v Cunningham* (1990, WD Tex) 741 F Supp 1281, affd (1990, CA5 Tex) 917 F2d 890.

Former medical student seeking to challenge his failure of exam administered to allow student to waive pharmacology course did not have cause of action under 20 USCS § 1232g(a)(2), where complaint fundamentally was challenge to substance of professor's evaluation, which was beyond reach of statute, exam test score did not even appear in student's permanent school record, and score of "high pass" that student ultimately received after taking class was accurately reflected in his permanent record. *Lewin v Medical College* (1996, ED Va) 931 F Supp 443, affd without op (1997, CA4 Va) 120 F3d 261, reported in full (1997, CA4 Va) 1997 US App LEXIS 20851.

Former student's allegations under Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USCS § 1232g, or Bivens, that federal officials violated and conspired to violate her rights by disclosing fact that student failed exam to emeritus professor, various unnamed members of public, and Department of Education were unavailing because FERPA is not enforceable through private lawsuits, either directly under statute or via 42 USCS § 1983. *Curto v Smith* (2003, ND NY) 248 F Supp 2d 132, affd (2004, CA2 NY) 392 F3d 502, 86 CCH EPD P 41868, cert den (2005, US) 125 S Ct 2944, 162 L Ed 2d 875, reh den (2005, US) 126 S Ct 402, 163 L Ed 2d 287 and cert den (2006, US) 2006 US LEXIS 1274.

18. Law enforcement records

Public university student newspaper editor is entitled to receive and publish criminal investigation and incident reports compiled by campus security department, where such reports do not contain type of information student is required to submit as precondition to enrollment or attendance, nor academic data created in natural course of student's career, because reports are not exempt from disclosure under state sunshine law nor protected as "educational records" under 20 USCS § 1232g. *Bauer v Kincaid* (1991, WD Mo) 759 F Supp 575, 112 ALR Fed 671 (criticized in *United States v Miami Univ.* (2000, SD Ohio) 91 F Supp 2d 1132).

Department of Education is enjoined from preventing universities from releasing to public personally identifiable information in law enforcement records regarding students by withdrawing or threatening to withdraw federal funding, where public interest in greater access to information bearing on personal safety and crime prevention outweighs arrested students' privacy interests in protecting their reputations, because 20 USCS § 1232g prohibition of information disclosure was a foul of First Amendment. *Student Press Law Center v Alexander* (1991, DC Dist Col) 778 F Supp 1227, 19 Media L R 1620.

In suit for plaintiff's personal injuries received when defendant, while intoxicated, negligently drove defendant's motor vehicle into plaintiff, defendant's motion for protective order, pursuant to *Fed. R. Civ. P. 26(c)*, was denied as to campus police department law enforcement records, as those records were specifically excluded from definition of protected education records by 20 USCS § 1232g(b)(4)(F)(ii), part of Family Educational Rights and Privacy Act; but, motion for protective order was granted as to defendant's disciplinary records, which were within general definition of protected

"education records" in § 1232g(a)(4)(A). *DeFeo v McAboy* (2003, ED Mo) 260 F Supp 2d 790.

Federal government's request to obtain records containing students' personal information in order to demonstrate that county board of education was in violation of § 407 of Civil Rights Act of 1964, 42 USCS § 2000c-6(a), (b), and to enforce compliance with desegregation goal of Civil Rights Act of 1964 constituted law enforcement purposes under 20 USCS § 1232g(b)(1)(C)(ii) of Family Educational Rights and Privacy Act, 20 USCS § 1232g; consequently, government's motion to compel discovery of these records was granted. *United States v Bertie County Bd. of Educ.* (2004, ED NC) 319 F Supp 2d 669.

19. Names and addresses of students

Although names and addresses of students sought by plaintiff are protected by Educational Privacy Act, court would compel college to disclose information in statistical, summary form such as number of transferees, exams taken for transfer purpose, and schools sponsoring them. *Naglak v Pennsylvania State University* (1990, MD Pa) 133 FRD 18.

Names and addresses of students enrolled at community college which have not been designated as "directory information" by college need not be disclosed; necessity of court order for disclosure must take into account students' right to privacy against demonstrated need for disclosure; in absence of demonstrated need for disclosure of names and addresses of students enrolled at community college, requesting party is not entitled to court ordered access. *Krauss v Nassau Community College* (1983, Sup) 122 Misc 2d 218, 469 NYS2d 553.

20. Newspapers

Newspaper's interest in access to court records in proceeding by school seeking to enjoin handicapped students from attending, is outweighed by privacy interests of handicapped child and by state's interest in protecting minors from public dissemination of hurtful information. *Webster Groves School Dist. v Pulitzer Pub. Co.* (1990, CA8 Mo) 898 F2d 1371, 17 Media L R 1633, reh den, en banc (1990, CA8) 1990 US App LEXIS 7897.

In action against school officials seeking to prevent bar on distribution of certain issue of school newspaper which was caused by publication of allegedly confidential information regarding student, defendants' reliance on 20 USCS § 1232g was misplaced since school records were not source of information; prohibition contained in 20 USCS § 1232g against disclosure of information contained in school records does not extend to information which is derived from source independent of school records because Congress could not have constitutionally prohibited comment on, or discussion of, facts about student which were learned independently of his school records. *Frasca v Andrews* (1978, ED NY) 463 F Supp 1043, 4 Media L R 2173.

Public university student newspaper editor is entitled to receive and publish criminal investigation and incident reports compiled by campus security department, where such reports do not contain type of information student is required to submit as precondition to enrollment or attendance, nor academic data created in natural course of student's career, because reports are not exempt from disclosure under state sunshine law nor protected as "educational records" under 20 USCS § 1232g. *Bauer v Kincaid* (1991, WD Mo) 759 F Supp 575, 112 ALR Fed 671 (criticized in *United States v Miami Univ.* (2000, SD Ohio) 91 F Supp 2d 1132).

21. Miscellaneous

20 USCS § 1232g of Family Educational Rights and Privacy Act only gives students and their parents access to their educational records and has no relationship to complaint for defamation brought by person arrested for driving while intoxicated, and sanction will be awarded against arrestee for bringing such suit. *Vukadinovich v McCarthy* (1990, CA7 Ind) 901 F2d 1439, 16 FR Serv 3d 915, reh den, en banc (1990, CA7) 1990 US App LEXIS 9683 and cert den (1991) 498 US 1050, 112 L Ed 2d 780, 111 S Ct 761.

Nothing in 20 USCS § 1232g requires prison officials to take plaintiff's word that envelope addressed to correspondence school contained transcripts, or to accept sealed mailing of envelopes. *Stow v Grimaldi* (1993, CA1 NH) 993 F2d 1002.

Assuming plaintiff's assertions to be true that they alleged a systematic policy of violating students' privacy where it was alleged that defendants contacted the student's doctors, a potential home instructor, and a lawyer to provide defamatory and inaccurate information about the student, they simply were not sufficient to constitute a "policy or practice" of permitting unauthorized release of educational records. *Weixel v Bd. of Educ. of N.Y.* (2002, CA2 NY) 287 F3d 138.

20 USCS § 1232g

20 USCS § 1232g relates to "privacy" and apparently establishes procedures for advising or notifying person when educational records pertaining to that person are to be released pursuant to judicial order, so that, in medical malpractice action, records of defendant's participation in hospital residency program did not appear to be privileged. *Reeg v Fetzer* (1976, WD Okla) 78 FRD 34.

Employee's action for invasion of privacy cannot be supported by 20 USCS § 1232g, where employee attended technical college classes as part of employee training program but refused to sign consent to release records showing attendance and grades to employer, because § 1232g does not prohibit request for or release of student records nor create private right of action. *Tombrello v USX Corp.* (1991, ND Ala) 763 F Supp 541, 30 BNA WH Cas 650, 119 CCH LC P 35502.

Physical education teacher's subjective comparison of students whom he had kicked out of his gym class to some nationally recognized troubled youth in comments teacher made to his cross-county team was not prohibited under 20 USCS § 1232g, as it did not constitute dissemination of records or information contained therein. *Daniel S. v Bd. of Educ. of York Cnty. High Sch.* (2001, ND Ill) 152 F Supp 2d 949.

Where teacher wrote personal notes about disabled child and threw out notes at end of school year, teacher's actions did not violate Family Education Rights and Privacy Act because notes did not constitute notes that would be likely to facilitate audit under 20 USCS § 1232f, nor did they constitute educational records in sense intended by 20 USCS § 1232g(a)(1)(A). *J.P. v W. Clark Cnty. Schs* (2002, SD Ind) 230 F Supp 2d 910.

In tort case that was filed against university, where injured student was punched by fellow student, university was not permitted to disclose fellow student's record to injured student even had injured student made specific request for disclosure, as such disclosure was prohibited under 20 USCS § 1232g(b)(1)(I) absent emergency. *Rhaney v Univ. of Md. E. Shore* (2005) 388 Md 585, 880 A2d 357.